

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES ERNEST DICKERSON,

Plaintiff,

v.

PENINSULA DAILY NEWSPAPER,

Defendant.

Case No. C06-5423 RJB/KLS

REPORT AND RECOMMENDATION

**NOTED FOR:
December 1, 2006**

This civil rights action has been referred to the undersigned United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff was given leave to proceed *in forma pauperis*. On September 26, 2006, Plaintiff was ordered to show cause why his Complaint should not be dismissed for failure to exhaust his administrative remedies. Plaintiff has failed to respond to this Court's Order. This report follows, recommending that Plaintiff's Complaint be dismissed with prejudice.

DISCUSSION

Plaintiff purports to sue the Peninsula Daily Newspaper under U.S.C. § 1983. Plaintiff has, however, failed to allege any conduct or request relief pursuant to Section 1983. (Dkt. # 1). Plaintiff does allege that a grievance process is ongoing, but not complete. (*Id.*) The Court advised Plaintiff that in order to state a claim under 42 U.S.C. § 1983, a complaint must allege that the conduct complained of was committed by a person acting under color of state law and that the

1 conduct deprived a person of a right, privilege, or immunity secured by the Constitution or laws of
2 the United States. (Dkt. # 9 (*citing* Parratt v. Taylor, 451 U.S. 527, 535 (1981), *overruled on other*
3 *grounds*, Daniels v. Williams, 474 U.S. 327 (1986)).

4 Plaintiff was also advised that he must allege facts showing how individually named
5 defendants caused or personally participated in causing the harm alleged in the complaint. (Dkt. # 9
6 (*citing* Arnold v. IBM, 637 F.2d 1350, 1355 (9th Cir. 1981)). Plaintiff failed to name any individual
7 defendants who caused or personally participated in any harm or conduct giving rise to constitutional
8 violations under § 1983. Indeed, Plaintiff's complaint contained no factual allegations of any kind,
9 sought no relief, and stated no causes of action.

10 Finally, the Court advised Plaintiff that the Prison Litigation Reform Act ("PLRA") requires
11 exhaustion of administrative remedies prior to filing a complaint in federal court. (Dkt. # 9). The
12 relevant portion of the PLRA states:

13 No action shall be brought with respect to prison conditions under section 1983 of
14 this title, or any other Federal law, by a prisoner confined in any jail, prison, or other
correctional facility until such administrative remedies as are available are exhausted.

15 42 U.S.C. § 1997e(a).

16 The Supreme Court recently reaffirmed this in Woodford v. Ngo. 548 U.S. ___, 126 S.Ct.
17 2378, No. 05-416 at 1 (2006). In that case, the Court not only upheld the requirement that the
18 inmates fully exhaust available administrative remedies, but it also held that those attempts needed to
19 be done in a timely manner. Id. at 11.¹ Plaintiff indicated in his Complaint that the grievance process
20 is not complete.

21 Accordingly, because Plaintiff failed to allege any conduct or request any relief pursuant to
22 Section 1983 and because it appeared that Plaintiff failed to exhaust his available administrative
23 remedies prior to filing suit, Plaintiff was ordered to show cause by October 31, 2006, why his case
24 should not be dismissed. Plaintiff was also advised that if he failed to file a response or if the

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26 ¹Non-exhaustion under section 1997e(a) creates a defense that must be raised and proved by
27 the defendant; unless the complaint clearly demonstrates a failure to exhaust on its face. *See Wyatt v.*
Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003).

1 response showed that he could not go forward, the Court would enter a report and recommendation
2 that his Complaint should be dismissed.

3 Plaintiff did not respond to the Court's order to show cause by the October 1st deadline, nor
4 did he seek an extension of the deadline.

5 **CONCLUSION**

6 Plaintiff was ordered to show cause why his complaint should not be dismissed. (Dkt. # 9).
7 Plaintiff has not complied with this Court's Order nor has he sought an extension of the deadline. The
8 Court recommends the action be **DISMISSED WITH PREJUDICE**. A proposed order
9 accompanies this Report and Recommendation.

10 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure,
11 the parties shall have ten (10) days from service of this Report and Recommendation to file written
12 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
13 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time
14 limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **December 1,**
15 **2006**, as noted in the caption.

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17 **DATED** this 9th day of November, 2006.

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21 Karen L. Strombom
22 United States Magistrate Judge
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